

VA ACQUISITION CIRCULAR

February 24, 2003

Number 97-10

- 1. **Material Transmitted**: The attached pages contain revisions to Department of Veterans Affairs Acquisition Regulation (VAAR) Parts 801, 806, 812, 837, and 852 and add a new Part 873.
- 2. **Summary of Changes**: This Circular provides replacement pages for the loose-leaf version of the VAAR. It incorporates final rule RIN 2900-AI71, Simplified Acquisition Procedures for Health-Care Resources, published in the Federal Register on Friday, January 24, 2003 (68FR3465-3474).
- RIN 2900-AI71 adds new Part 873 to the VAAR and amends related VAAR parts to establish simplified procedures for the competitive acquisition of health-care resources, consisting of commercial services or the use of medical equipment or space, pursuant to 38 United States Code (U.S.C.) 8151-8153. Public Law 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, authorized VA to prescribe simplified procedures for the procurement of health-care resources.

More specifically, this document makes the following changes to the VAAR:

- a. Paragraph (b) of Section 806.302-5 waives the justification and approval requirements of Federal Acquisition Regulation (FAR) 6.303 and 806.304 for sole source acquisitions from affiliated institutions or medical practice groups or other approved entities associated with affiliated institutions.
- b. Five new provisions have been added to the VAAR for use when conduction acquisitions in accordance with Part 873.

- c. Under Section 873.103, acquisitions of health-care resources are exempt from the priority requirements of FAR 8.001(a)(2), except for acquisitions of services from Javits-Wagner-O'Day Act workshops.
- d. Section 873.104 exempts sole source acquisitions of health-care resources from affiliates from the requirement to publish notice in FedBizOpps or VA's Business Opportunities System (BOS).
- e. Section 873.105 requires the formation of an acquisition team to plan any acquisitions of health-care resources exceeding the simplified acquisition threshold (SAT).
- f. Section 873.107 allows the head of the contracting activity to waive any requirement to set aside an acquisition of health-care resources for small business. This will allow the competitive acquisition of health-care resources without having to exclude affiliates, medical practice groups associated with affiliates, and nonprofit health-care providers from the competition due to their not being small businesses. This is intended to encourage greater competition for health-care resources and reduce reliance on the authority of 38 U.S.C. 8153 to award contracts without competition.
- g. Section 873.108 waives the requirement to announce sole source acquisitions from affiliates and sole source acquisitions of hospital care and medical services in FedBizOpps and BOS. It also requires that competitive acquisitions of health-care resources exceeding the SAT be publicized in ways that will promote competition to the maximum extent practical. Local medical providers may not regularly review announcements in FedBizOpps and may not be made aware that VA is seeking competition if FedBizOpps and VA's BOS are the only sites where the acquisition is announced. This section encourages use of other publication methods that are more likely to be noticed by all potentially interested parties.
- h. Section 873.109 allows contracting officers to accept late requests for proposals or requests for quotations in certain circumstances and to cancel an acquisition when cancellation is determined to be in the best interest of the Government.
- i. Section 873.111 provides acquisition strategies and procedures that may be used to acquire health-care resources, including the use of reverse auction techniques.
- j. The remaining sections provide guidance on and procedures for conducting simplified acquisitions of health-care resources.

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3. Filing Instructions:

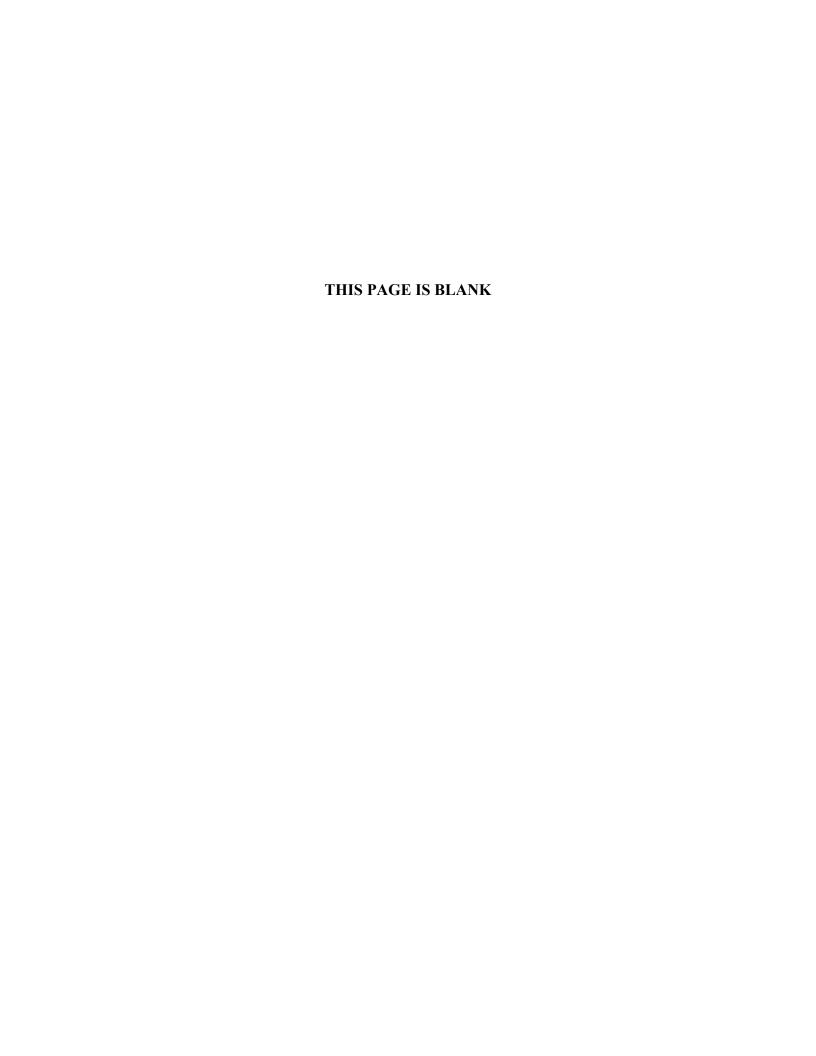
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4. Effective date: RIN 2900-AI71 is effective on February 24, 2003.

Gary J. Krump Deputy Assistant Secretary for Acquisition and Materiel Management

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VAAC 97-4 May 11, 1998

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- (1) A deviation to this prohibition may be processed in accordance with 801.403 in order to allow the contracting officer to require contractor reporting or recordkeeping beyond that prescribed in the FAR and VAAR. The request for deviation will clearly specify what information or recordkeeping will be required and why it is required. The request will be signed by the head of the contracting activity.
- (2) The Deputy Assistant Secretary for Acquisition and Materiel Management (95) will review the request and upon concurrence will likewise submit the request to Office of Management and Budget (OMB) for approval as prescribed by the Paperwork Reduction Act of 1980. If approved, the Deputy Assistant Secretary for Acquisition and Materiel Management will send the approval back to the requester with the OMB clearance number.
- (c) In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96-511), the reporting or recordkeeping provisions that are included in this VAAR have been approved by OMB and have been given the following approval numbers:

48 CFR part or section where identified and described	Current OMB Control No.	48 CFR part or section where identified and described	Current OMB Control No.
809.504(D)	2900-0418	852.236-79	2900-0422
819.7003	2900-0445	852.236-80 (Alt. I)	2900-0422
836.606-71	2900-0422	852.236-82 through	
852.207-70	2900-0590	852.236-85	2900-0422
852.211-70	2900-0587	852.236-88	2900-0422
852.211-74	2900-0588	852.236-89	2900-0622
852.211-75	2900-0586	852.236-91	2900-0623
852.211-77	2900-0585	852.237-7	2900-0590
852.214-70	2900-0593	852.237-71	2900-0590
852.219-70	2900-0584	852.270-03	2900-0589
852.236-72	2900-0422	871.201-2	2900-0416

801.303 Publication and codification.

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The VAAR is codified as chapter 8 of title 48, Code of Federal Regulations. Codified changes to the VAAR will be published in the *Federal Register*. The Deputy Assistant Secretary for Acquisition and Materiel Management arranges distribution of the issues to VA contracting activities and the Office of Acquisition and Materiel Management should be notified of changes to the distribution list.

VAAC 97-6 December 28, 1998

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801.304 Department control and compliance procedures.

Office of Acquisition and Materiel Management is responsible for ensuring that the VAAR and amendments thereto are developed as prescribed by the FAR.

SUBPART 801.4 - DEVIATIONS FROM THE FAR OR VAAR

801.403 Individual deviations.

- (a) When contracting officers consider it necessary to deviate from the policies set forth in the FAR or VAAR, a request for authority to do so will be submitted to the Deputy Assistant Secretary for Acquisition and Materiel Management (95). The request will clearly set forth the circumstances warranting the deviation and the nature of the deviation.
- (b) When a deviation in an individual case is authorized by the Deputy Assistant Secretary for Acquisition and Materiel Management, the authorization will be filed in the purchase or contract file, whichever is appropriate.

801,404 Class deviations.

The Deputy Assistant Secretary for Acquisition and Materiel Management is responsible for determining the need for class deviations. If determined necessary, the Deputy Assistant Secretary for Acquisition and Materiel Management will request deviation authority from the Deputy Secretary through the Senior Procurement Executive as well as complying with the provisions in FAR 1.404.

SUBPART 801.6 - CAREER DEVELOPMENT, CONTRACTING AUTHORITY, AND RESPONSIBILITIES.

801.601 General.

- (a) This subpart establishes general contracting officer authority and responsibility. However, other provisions in both the FAR and the VAAR contain some contracting officer limitations and it is incumbent upon each contracting officer to be aware of those limitations.
- (b) Personnel, other than those designated in 801.602, may determine quality, quantity and delivery requirements for items or services to be purchased. However, under no circumstances will individuals who have not been delegated contracting authority commit the Government for

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- (2) All fixed price, sealed bid construction contracts involving \$500,000 or more in either appropriated or unappropriated funds.
- (3) All 8(a)contracts exceeding \$500,000.
- (4) All proposed agreements and contracts coming within the purview of one of more of the following:
 - (i) Contracts for insurance.
 - (ii) Utility service agreements involving \$50,000 or more.
 - (iii) Contracts for consulting services (see Subpart 837.2) and management and professional services (see 837.271).
 - (iv) Contracts for research or research and development involving \$50,000 or more.
 - (v) Automatic data processing equipment, when purchased from other than a Federal Supply Schedule contract, involving \$50,000 or more.
 - (vi) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of scarce medical specialist services acquired under the authority of 38 U.S.C. 7409.
 - (vii) Competitive contracts exceeding \$1.5 million and noncompetitive contracts exceeding \$500,000 for the acquisition of health-care resources acquired under the authority of 38 U.S.C. 8151-8153.
 - (viii) Agreements with other Federal agencies regardless of dollar value. Those agreements of \$5,000 or more will be forwarded to General Counsel for legal review. VA/DoD Sharing Agreements executed under the authority of Public Law 97-174 (38 U.S.C. 8111) and sections 201-206 of Public Law 102-585 are exempt from review by the Office of Acquisition and Materiel Management; however, they must be approved in accordance with VA Manual M-1, Part I, Chapter 1, Section IX.
 - (ix) Contracts for ADP software exceeding \$10,000.

- (x) ADP software licensing agreements for ADP software exceeding \$10,000 (all software licensing agreements require technical review).
- (5) All proposed letter contracts and ensuing formal contracts involving expenditures of \$5,000 or more
- (6) Any proposed agreement that is unique, novel, or unusual (including all consignment agreements, regardless of anticipated dollar value--except those established and provided in Federal Supply Schedule Contracts).
- (7) Step One of two-step sealed bid procurements when the anticipated value is more than \$200,000.
- (b) The following categories of proposed contractual actions require the concurrence of General Counsel:
 - (1) Contract modifications, terminations (including final decision (cure) letters), disputes and claims in excess of \$25,000 (\$50,000 for contracts awarded by the Office of Facilities Management).
 - (2) Contract modifications granting a time extension of more than 20 days.

If after assessment of an individual facility, it is determined that appropriate "consideration" is obtained for time extensions and the extensions are otherwise appropriately granted, the requirement for preapproval may be waived.

- (3) Assignment of claims.
- (4) Proposed awards to other than the low evaluated bidder/offer.
- (c) In addition to the requirements of paragraphs (a) and (b) of this section, the following require review and concurrence of the General Counsel:
 - (1) Changes or revisions to all contract clauses.
 - (2) Changes or revisions to prescribed VA contract forms.

(Process in accordance with VA Manual MP-1, part II, chapter 4, and departmental supplements thereto.)

- (d) Utility construction and connection contracts which are developed in the Office of Facilities Management and cost \$50,000 or more will be reviewed by General Counsel and the Chief Facilities Management Officer, Office of Facilities Management.
- (e) When legal assistance is requested by any Central Office contracting activity, the contracting officer will brief the General Counsel regarding to the facts and points of issue to facilitate prompt resolution.
- (f) With regard to solicitations and contracts awarded and administered by the Central Office contracting activities, the General Counsel will be requested to participate in conferences where it is expected that legal problems or contract provisions will be considered, and in meetings attended by legal representatives of private parties or other Government agencies. Assigned procurement counsel will be requested to participate in the drafting of correspondence involving controversial or sensitive contractual matters of a significant nature.
- (g) All protests against award will be reviewed by the General Counsel in accordance with the provisions specified in 48 CFR 833.103.
- (h) Excluded from these legal review requirements are:
 - (1) Agreements, licenses, easements, or deeds dealing with management, sale, or lease of properties acquired by VA as a result of liquidation of guaranteed, direct, acquired or vendor loans.
 - (2) Orders or contracts for procurement of leased telecommunications systems, installation of and changes to telephone PBX systems at individual VA locations or orders issued under GSA area wide contracts with the American Telephone and Telegraph Company and local telephone companies.
- (i) If a change order (unilateral agreement) is essential for the logical process of the contract, the Office of Acquisition and Materiel Management (95B) shall be called prior to issuing the document. (This requirement does not apply to change orders issued by the Office of Facilities Management.)
- (j) The following apparent low responsive and responsible bids/offers with the respective solicitations will be submitted for the review of the Deputy Assistant Secretary for Acquisition and Materiel Management (95B) prior to award:

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- (1) Negotiated contract actions in the Office of Facilities Management which exceed \$2 million.
- (2) Bids/offers for construction contracts to be awarded by VHA facilities which exceed \$5 million.
- (3) Bids/offers for service contracts, including A/E, which exceed \$2 million, and
- (4) Bids/offers for supply contracts which exceed \$5 million in total evaluated cost, (excluding FSS contracts awarded by VA National Acquisition Center).

801.602-71 Processing contracts for legal/technical review.

- (a) All competitively awarded solicitations requiring legal and/or technical review will have such reviews completed prior to opening of bids or proposals. The contracting officer will fully evaluate technical and legal review comments prior to opening bids or proposals. Potential bidders/offerors will be advised of changes to the solicitation by amendment and afforded sufficient time for evaluation prior to opening of bids or offers.
- (b) Veterans Health Administration (VHA) Field Facilities, VA National Acquisition Center, VA Supply Depots.
 - (1) Proposed contracts or agreements specified in 801.602-70(a)(1), (2), (3), (4)(iii) through (v), (5), (6), and (7) will be forwarded by the contracting officer directly to the Deputy Assistant Secretary for Acquisition and Materiel Management Acquisition Review Division. The Deputy Assistant Secretary for Acquisition and Materiel Management will review the submissions and when applicable forward them directly to the General Counsel (025).
 - (2) Proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602-70(a)(4)(vi) and (a)(4)(vii), will be forwarded to Central Office in accordance with Veterans Health Administration directives and VA Manual M-1, Part 1, Chapter 34, for review and submission to the Office of the General Counsel (025).

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later than at the time they are furnished to prospective bidders. Where feasible, these documents should be submitted for review prior to the time they are furnished to prospective bidders.

- (b) For proposed contracts and agreements for scarce medical specialist services or for the mutual use or exchange of use of health-care resources, as specified in 801.602-70(a)(4)(vi) and (a)(4)(vii), the documents referred to in VA Manual M-1, Part 1, Chapter 34.
- (c) For all other proposed contracts and agreements, a copy of the documents to be used in the solicitation and/or award of contract, including any other documents which support the proposed procurement action, e.g., justification and approval in the case of noncompetitive procurement. Solicitation documents will be submitted no later than at the time they are mailed to prospective bidders. Where feasible these documents should be submitted for review prior to the time they are mailed to prospective bidders.
- (d) For contract modifications described in 801.602-70(b) and 801.602-71(b)(4) and (d):
 - (1) A draft of the proposed modification. This shall be prepared on a SF 30, Amendment of Solicitation/Modification of Contract, and shall specify the exact language to be used. Changes in work, time and cost must be specifically described;
 - (2) A statement describing the need for the changed work. This should also be accompanied by any back-up documentation, including a copy of the general statement of work in the original contract plus any existing contract language which will be modified. Include a statement that the work covered by the proposed modification is or is not within the original scope of the contract, setting forth fully the facts considered in reaching the conclusion;
 - (3) A statement containing an analysis on what necessitated the modification, e.g., design error, technical change, medical center requirements;
 - (4) The Contracting officers technical representative (COTRs) technical evaluation of the proposed change;
 - (5) For construction modifications and, where applicable for architectengineer (A/E) modifications, a copy of drawings which the COTR has marked up to delineate the proposed changed work. If appropriate,

include a copy of the pertinent technical specifications. Whenever a proposed contract modification involves numerous changes to drawings and specifications for a Central Office project, the drawings and specifications will be available for review in the office of the Project Director;

- (6) Costing information including:
 - (i) The contractor's cost proposal in the format required by the contract
 - (ii) The COTRs independent cost evaluation.
 - (iii) The A/Es independent cost evaluation.
 - (iv) Contracting officer's Price Negotiation Memorandum (PNM) in accordance with VAAR 815.808. For Office of Facilities Management contracts, the PNM may be submitted by either the contracting officer or COTR.
 - (v) For A/E contracts, a listing of the fees awarded in the original contract and previous modifications.
 - (vi) For A/E working drawing contracts, a statement regarding the actual or estimated cost of the original construction and any estimated change to the overall project cost as a result of the proposed modification.
 - (vii) Any other relevant costing information, such as independent market research, which was or will be used as negotiation criteria.
- (7) A concurrence on the memorandum from the appropriate office indicating that funds are available or a statement concerning the actions which must be taken to secure the required funds; and
- (8) The names and telephone numbers of the contracting officer and COTR.
- (e) For bids/offers submitted as required by 801.602-70(j), the following documents will be provided:
 - (1) Request for contract action, including justification of need.
 - (2) The solicitation.

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Part 806 - Competition Requirements

PART 806 - COMPETITION REQUIREMENTS

SUBPART 806.3 - OTHER THAN FULL AND OPEN COMPETITION

806.302-3 Industrial mobilization; or experimental, development, or research work.

Research authorized to be conducted by the Department of Veterans Affairs in accordance with the provisions of title 38, U.S. Code, will be negotiated under the authority of 41 U.S.C. 253(c)(3) (except prosthetics research authorized by 38 U.S.C. 7303 will be negotiated under the authority of 41 U.S.C. 253(c)(5), regardless of the dollar amount). Such acquisitions require justifications and approvals required by FAR 6.303 and 48 CFR 806.304.

806.302-5 Authorized or required by statute.

- (a) Scarce Medical Specialist contracts negotiated under the authority of 38 U.S.C. 7409 are approved for other than full and open competition *only* when such contracts are with institutions affiliated with the Department of Veterans Affairs pursuant to 38 U.S.C. 7302. The justification and approval requirements of FAR 6.303 and 806.304 are still applicable.
- (b) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services, the use of medical equipment or space, or research, negotiated under the authority of 38 U.S.C. 8151-8153, are approved for other than full and open competition only when such contracts or agreements are with institutions affiliated with the Department of Veterans Affairs, pursuant to 38 U.S.C. 7302, with medical practice groups or other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or with blood banks, organ banks, or research centers. The justification and approval requirements of FAR 6.303 and VAAR 806.304 do not apply to such contracts or agreements.
- (c) Contracts or agreements for the mutual use or exchange of use of health-care resources, consisting of commercial services or the use of medical equipment or space, negotiated under the authority of 38 U.S.C. 8151-8153, and not acquired under the authority of paragraph (b) of this section, may be conducted without regard to any law or regulation that would otherwise require the use of competitive procedures for procuring

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Part 806 - Competition Requirements

resources, provided the procurement is conducted in accordance with the simplified procedures contained in (VAAR) 48 CFR part 873. The justification and approval requirements of FAR 6.303 and 806.304 shall apply to such contracts or agreements conducted on a sole source basis.

- (d) Various other sections of Title 38, United States Code, authorize the Secretary to enter into certain contracts, and certain types of contracts, without regard to any other provision of law. The justification and approval requirements specified in FAR 6.303 and 806.304 are still applicable. VA contracting officers entering into contracts using other than competitive procedures for any of the following items or services, estimated to cost in excess of the simplified acquisition threshold, will cite, in addition to 41 U.S.C. 253(c)(5), the appropriate section of Title 38, United State Code, as their authority to do so.
 - (1) Contracts for orthopedic and prosthetic appliances and related services including research. 38 U.S.C. 8123.

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Part 806 - Competition Requirements

- (2) Contracts to purchase or sell merchandise, equipment, fixtures, supplies and services for the operation of the Veterans Canteen Service. 38 U.S.C. 7802.
- (3) Contracts or leases for the operation of parking facilities established under authority of 38 U.S.C. 8109(b), provided that the establishment, operation, and maintenance of such facilities have been authorized by the Secretary or designee. 38 U.S.C. 8109(f).
- (4) Contracts for laundry and other common services such as the purchase of steam, may be noncompetitively negotiated with non-profit, tax-exempt, educational, medical, or community institutions, when specifically approved by the Secretary or designee and when such services are not reasonably available from private commercial sources. 38 U.S.C. 8122(c).
- (5) Contracts or agreements with public or private agencies for services of translators. 38 U.S.C. 513.
- (6) Contracts for nursing home care. 38 U.S.C. 1720.

806.302-7 Public interest.

Use of 41 U.S.C. 253(c)(7) to support contract award using other than full and open competition will require a D&F prepared in accordance with FAR subpart 1.7 and VAAR subpart 801.7 and signed by the Secretary. The D&F will be prepared by the contracting officer and submitted by the head of contracting activity (Subpart 802.1) to the Agency Competition Advocate (806.501). The submission will include:

- (a) The date of expected contract award (*Note: Congress must be notified 30 days prior to award*), and
- (b) A justification prepared by the contracting officer in accordance with FAR 6.303.

806.304 Approval of the justification.

(a) Approvals of justifications as specified in FAR 6.304, prepared in accordance with FAR 6.303, will be approved as follows:

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Part 812 – Acquisition of Commercial Items

PART 812 – ACQUISITION OF COMMERCIAL ITEMS

SUBPART 812.3 - SOLICITATION PROVISIONS AND CONTRACT CLAUSES FOR THE ACQUISITION OF COMMERCIAL ITEMS

812.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

- (a) Notwithstanding prescriptions contained elsewhere in the VAAR, when acquiring commercial items, contracting officers shall be required to use only those provisions and clauses prescribed in this part.
- (b) The provision and clause in the following VAAR sections shall be used, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:
 - (1) 852.219-70, Veteran-owned small business.
 - (2) 852.270-4, Commercial advertising.
- (c) The provisions and clauses in the following VAAR sections must be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items:
 - (1) 852.207-70, Report of employment under commercial activities.
 - (2) 852.211-71, Guarantee clause.
 - (3) 852.211-72, Inspection.
 - (4) 852.211-73, Frozen processed foods.
 - (5) 852.211-74, Telecommunications equipment.
 - (6) 852.211-75, Technical industry standards.
 - (7) 852.214-70, Caution to bidders-bid envelopes.
 - (8) 852.216-70, Estimated quantities for requirements contracts.

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Part 812 – Acquisition of Commercial Items

- (9) 852.229-70, Purchases from patient's funds.
- (10) 852.229-71, Purchases for patients using Government funds and/or personal funds of patients.
- (11) 852.233-70, Protest content.
- (12) 852.237-7, Indemnification and Medical Liability Insurance.
- (13) 852.237-70, Contractor responsibilities.
- (14) 852.237-71, Indemnification and insurance (vehicle and aircraft service contracts).
- (15) 852.252-1, Provisions or clauses requiring completion by the offeror or prospective contractor.
- (16) 852.270-1, Representatives of contracting officers.
- (17) 852.270-2, Bread and bakery products.
- (18) 852.270-3, Purchase of shellfish.
- (d) The clauses in the following VAAR sections shall be used, when appropriate, in accordance with the prescriptions contained therein or elsewhere in the VAAR, in requests for quotations, solicitations, or contracts for the acquisition of commercial items, provided the contracting officer determines that use of the clauses is consistent with customary commercial practices.
 - (1) 852.211-70, Requirements for operating and maintenance manuals.
 - (2) 852.211-77, Brand name or equal.
- (e) The contracting officer shall insert the clause in 852.271-70, Services provided eligible beneficiaries, by reference, in all requests for quotations, solicitations, and contracts meeting the prescription contained therein.
- (f) Clauses are not required for micro-purchases using the procedures of this part or part 813. However, this does not prohibit the use of any clause prescribed in this part or elsewhere in this chapter in micro-purchases when determined by the contracting officer to be in the Government's best interest.

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Part 812 – Acquisition of Commercial Items

- (g) When soliciting for commercial services or the use of medical equipment or space under the authority of part 873 and 38 U.S.C. 8151-8153, the provisions and clauses in the following VAAR sections may be used in accordance with the prescriptions contained therein or elsewhere in the VAAR:
 - (1) 852.273-70, Late offers.
 - (2) 852.273-71, Alternative negotiation techniques.
 - (3) 852.273-72, Alternative evaluation.
 - (4) 852.273-73, Evaluation health-care resources.
 - (5) 852.273-74, Award without exchanges.

812.302 Tailoring of provisions and clauses for the acquisition of commercial items.

Agency procedures for approval of waivers: Waivers to tailor solicitations in a manner that is inconsistent with customary commercial practice shall be prepared by contracting officers in accordance with FAR 12.302(c). Waiver requests shall be submitted to the contracting officer's next higher level supervisor for approval. Approved requests shall be retained in the contract file.

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Part 837 - Service Contracting

(e) Copies of all advisory and assistance services procurements accomplished through letters of agreement shall be provided to the local servicing purchase and contract office for entry into the Federal Procurement Data System.

SUBPART 837.3 - DISMANTLING, DEMOLITION, OR REMOVAL OF IMPROVEMENTS

837.300 Scope of subpart.

Contracting officers should be cognizant of the requirements contained in VA Manual MP-3, Part II, Chapter 6, for approval necessary prior to entering into a contract for disposal of VA real property. Such approval(s) shall be included in the contract file.

SUBPART 837.4 - NONPERSONAL HEALTH-CARE SERVICES

837.403 Contract clause.

The contracting officer shall insert the clause at 852.237-7, Indemnification and Medical Liability Insurance, in lieu of FAR Clause 52.237-7, in solicitations and contracts for nonpersonal health-care services, including solicitations and contacts for nonpersonal health-care services awarded under the authority of 38 U.S.C. 8151-8153 and (VAAR) 48 CFR part 873. The contracting officer may include the clause in bilateral purchase orders for nonpersonal health-care services awarded under the procedures in FAR parts 12, 13, 14, and 15 and (VAAR) 48 CFR parts 812, 813, 814, and 815.

SUBPART 837.70 - MORTUARY SERVICES

837.7001 General.

This subpart establishes the policies and procedures governing the procurement of funeral and burial services for deceased beneficiaries of the Department of Veterans Affairs, as provided in 38 U.S.C. 2303.

837.7002 List of qualified funeral directors.

Contracting officers will establish, in coordination with cognizant Medical Administration Service personnel or other personnel designated by the medical center director to perform these functions, a list of funeral directors capable of performing the burial services specified in 837.7003. The contracting officer will attempt to establish a commitment to perform these services within the statutory limitation of \$300. Each funeral director must be fully licensed in the jurisdiction

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in which the business operates. If there has been no prior experience with the funeral director which would ensure the adequacy of the funeral director's services and casket, arrangements will be made prior to contract negotiation to inspect the premises and the casket to be provided, and to check with the local business bureau and/or Chamber of Commerce.

837.7003 Funeral authorization.

- (a) When a veteran dies while receiving care in a Department of Veterans Affairs health care facility or in a non-Department of Veterans Affairs institution at Department of Veterans Affairs expense, and the decedent's remains are unclaimed, the Chief, Medical Administration Service, or the person designated by the medical center director to perform these functions, will forward to the head of the contracting activity, a properly executed VA Form 10-2065, Funeral Arrangements, requesting that funeral and burial services for the deceased be procured. Burial will be made in the nearest National Cemetery having available grave space.
- (b) The contracting officer will enter into negotiations with local funeral directors to procure a complete funeral and burial service within the statutory allowance of \$300. This service will consist of and will be specified on the purchase order, VA Form 90-2138, Order for Supplies or Services, or VA Form 90-2138-ADP. Purchase Order for Supplies or Services, as follows:
 - (1) Preparation of the body, embalming.
 - (2) Clothing.
 - (3) Casket. (The casket, as a minimum, will be constructed from thick, strong particle board and must be of sufficient strength to support the weight of an adult human body. Cardboard or press paper or similar materials are not acceptable.)
 - (4) Securing all necessary permits.
 - (5) Ensuring that a United States flag (provided the funeral director in accordance with Veterans Health Administration Manual M-1, Part I, paragraph 14.40) accompanies the casket to place of burial.

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852.207-70 Report of employment under commercial activities.

As prescribed in 807.304-77 and 873.110, the following clause must be included in A-76 cost comparison solicitations and solicitations issued under the authority of 38 U.S.C. 8151-8153 which may result in the conversion, from in-house to contract performance, of work currently being performed by VA employees:

REPORT OF EMPLOYMENT UNDER COMMERCIAL ACTIVITIES (OCT 1988)

- (a) Consistent with the Government post-employment conflict of interest regulations, the contractor shall give adversely affected Federal employees the right of first refusal for all employment openings under this contract for which they are qualified.
- (b) Definitions.
 - (1) An "adversely affected Federal employee" is:
 - (i) Any permanent Federal employee who is assigned to the Government commercial activity, or
 - (ii) Any employee identified for release from his or her competitive level or separated as a result of the contract.
 - (2) "Employment openings" are position vacancies created by this contract which the contractor is unable to fill with personnel in the contractor's employ at the time of the contract award, including positions within a 50-mile radius of the commercial activity which indirectly arise in the contractor's organization as a result of the contractor's reassignment of employees due to the award of this contract.
 - (3) The "contract start date" is the first day of contractor performance.
- (c) Filling employment openings.
 - (1) For a period beginning with contract award and ending 90 days after the contract start date, no person other than an adversely affected Federal employee on the current listing provided by the contracting officer shall be offered an employment opening until all adversely affected and qualified Federal employees identified by the contracting officer have been offered the job and refused it.

- (2) The contractor may select any person for an employment opening when there are no qualified adversely affected Federal employees on the latest current listing provided by the contracting officer.
- (d) Contracting reporting requirements.
 - (1) No later than 5 working days after contract award the contractor shall furnish the contracting officer with the following:
 - (i) A list of employment openings including salaries and benefits,
 - (ii) Sufficient job application forms for adversely affected Federal employees.
 - (2) By the contract start date, the contractor shall provide the contracting officer with the following:
 - (i) The names of adversely affected Federal employees offered an employment opening,
 - (ii) The date the offer was made,
 - (iii) A brief description of the position,
 - (iv) The date of acceptance of the offer and the effective date of employment,
 - (v) The date of rejection of the offer, if applicable for salary and benefits contained in the rejected offer, and
 - (vi) The names of any adversely affected Federal employees who applied but were not offered employment and the reason(s) for withholding an offer.
 - (3) For the first 90 days after the contract start date, the contractor shall provide the contracting officer with the names of all persons hired or terminated under the contract within five working days of such hiring or termination.

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852.271-72 Time spent by counselee in counseling process.

Insert the following clause in contracts entered into for services relating to vocational counseling:

TIME SPENT BY COUNSELEE IN COUNSELING PROCESS (APR 1984)

The contractor agrees that no counselee referred under the provisions of this agreement will be required to give any extra time in connection with the counseling process to supply test results or other information for purposes other than those specified in this contract.

(End of Clause)

852.271-73 Use and publication of counseling results.

Insert the following clause in contracts entered into for services relating to vocational counseling:

PUBLISHING RESULTS (APR 1984)

The contractor agrees that none of the information or data gathered in connection with the services specified in this contract or studies or materials based thereon or relating thereto will be publicized without the prior approval of the Under Secretary for Benefits or his/her designee.

(End of Clause)

852.271-74 Inspection.

Insert the following clause in contracts entered into with educational institutions and training establishments for education and rehabilitation:

INSPECTION (APR 1984)

The contractor will permit the duly authorized representative of the Department of Veterans Affairs to visit the place of instruction as may be necessary and examine the training facilities and work of the veterans in training under this contract.

(End of Clause)

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852.271-75 Extension of contract period.

The following clause will be included in contracts where appropriate pertaining to services for education and rehabilitation:

EXTENSION OF CONTRACT PERIOD (APR 1984)

This contract may be extended from year to year if agreeable to both parties provided the agreement for extension is consummated 30 days prior to the expiration date, and further provided that there is no change in the provisions, terms, conditions, or rate of payment. Any extension made hereunder is subject to the availability of funds during the period covered by the extension.

(End of Clause)

852.273-70 Late offers.

As prescribed in 873.110(a), insert the following provision:

LATE OFFERS (JAN 2003)

This provision replaces paragraph (f) of FAR provision 52.212-1. Offers or modifications of offers received after the time set forth in a request for quotations or request for proposals may be considered, at the discretion of the contracting officer, if determined to be in the best interest of the Government. Late bids submitted in response to an invitation for bid (IFB) will not be considered.

(End of provision)

852.273-71 Alternative negotiation techniques.

As prescribed in 873.110(b), insert the following provision:

ALTERNATIVE NEGOTIATION TECHNIQUES (JAN 2003)

The contracting officer may elect to use the alternative negotiation techniques described in section 873.111(e) of 48 Code of Federal Regulations Chapter 8 in conducting this procurement. If used, offerors may respond by maintaining offers as originally submitted, revising offers, or submitting an alternative offer. The Government may consider initial offers unless revised or withdrawn, revised offers, and alternative offers in making the award. Revising an offer does not guarantee an offeror an award.

(End of provision)

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852.273-72 Alternative evaluation.

As prescribed in 873.110(c), insert the following provision:

ALTERNATIVE EVALUATION (JAN 2003)

- (a) The Government will award a contract resulting from this solicitation to the responsible offeror submitting the lowest priced offer that conforms to the solicitation. During the specified period for receipt of offers, the amount of the lowest offer will be posted and may be viewed by —[Contracting officer insert description of how the information may be viewed electronically or otherwise]—. Offerors may revise offers anytime during the specified period. At the end of the specified time period for receipt of offers, the responsible offeror submitting the lowest priced offer will be in line for award.
- (b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).

(End of provision)

852.273-73 Evaluation – health-care resources.

As prescribed in 873.110(d), in lieu of FAR provision 52.212-2, the contracting officer may insert a provision substantially as follows:

EVALUATION – HEALTH-CARE RESOURCES (JAN 2003)

(a) The Government will award a contract resulting from this solicitation to the responsible offeror whose offer, conforming to the solicitation, will be most advantageous to the Government, price and other factors considered. The following information or factors shall be used to evaluate offers:—[Contracting officer insert evaluation information or factors, such as technical capability to meet the Government's requirements, past performance, or such other evaluation information or factors as the contracting officer deems necessary to evaluate offers. Price must be evaluated in every acquisition. The contracting officer may include the evaluation information or factors in their relative order of importance, such as in descending order of importance. The relative importance of any evaluation information must be stated in the solicitation.]—

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- (b) Except when it is determined not to be in the Government's best interest, the Government will evaluate offers for award purposes by adding the total price for all options to the total price for the basic requirement. The Government may determine that an offer is unacceptable if the option prices are materially unbalanced. Evaluation of options shall not obligate the Government to exercise the option(s).
- (c) If this solicitation is a request for proposals (RFP), a written notice of award or acceptance of an offer, mailed or otherwise furnished to the successful offeror within the time for acceptance specified in the offer, shall result in a binding contract without further action by either party. Before the offer's specified expiration time, the Government may accept an offer (or part of an offer), whether or not there are negotiations after its receipt, unless a written notice of withdrawal is received before award. (End of provision)

852.273-74 Award without exchanges.

As prescribed in 873.110(e), insert the following provision:

AWARD WITHOUT EXCHANGES (JAN 2003)

The Government intends to evaluate proposals and award a contract without exchanges with offerors. Therefore, each initial offer should contain the offeror's best terms from a cost or price and technical standpoint. However, the Government reserves the right to conduct exchanges if later determined by the contracting officer to be necessary.

(End of provision)

PART 873—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

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PART 873 – SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH-CARE RESOURCES

873.101 Policy.

The simplified acquisition procedures set forth in this Department of Veterans Affairs Acquisition Regulation (VAAR) part apply to the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space. These procedures shall be used in conjunction with the Federal Acquisition Regulation (FAR) and other parts of VAAR. However, when a policy or procedure in FAR or another part of VAAR is inconsistent with the procedures contained in this part, this part shall take precedence. These procedures contain more flexibility than provided in FAR or elsewhere in VAAR.

873.102 Definitions.

Commercial service means a service, except construction exceeding \$2,000 and architect-engineer services, that is offered and sold competitively in the commercial marketplace, is performed under standard commercial terms and conditions, and is procured using firm-fixed price contracts.

Health-care providers includes health-care plans and insurers and any organizations, institutions, or other entities or individuals who furnish health-care resources.

Health-care resource includes hospital care and medical services (as those terms are defined in section 1701 of title 38 United States Code (U.S.C.), any other health-care service, and any health-care support or administrative resource, including the use of medical equipment or space.

873.103 Priority sources.

Without regard to FAR 8.001(a)(2), except for the acquisition of services available from the Committee for Purchase From People Who Are Blind or Severely Disabled, pursuant to the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) and FAR subpart 8.7, there are no priority sources for the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space.

873.104 Competition requirements.

(a) Without regard to FAR part 6, if the health-care resource required is a commercial service, the use of medical equipment or space, or research, and is to be acquired from an institution affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical

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practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers, the resource may be acquired on a sole source basis.

- (b) Acquisitions of health-care resources identified in paragraph (a) of this section are not required to be publicized as otherwise required by 873.108 or FAR 5.101. In addition, written justification, as otherwise set forth in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6, is not required.
- (c) Without regard to FAR 6.101, if the health-care resource required is a commercial service or the use of medical equipment or space, and is to be acquired from an entity not described in paragraph (a) of this section, contracting officers must seek competition to the maximum extent practicable and must permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal or quotation (as appropriate) for the resources to be procured and provide for the consideration by the Department of bids, proposals, or quotations so submitted.
- (d) Without regard to FAR 5.101, acquisition of health-care resources identified in paragraph (c) of this section shall be publicized as otherwise required by 873.108. Moreover, for any such acquisition described in paragraph (c) of this section to be conducted on a sole source basis, the contracting officer must prepare a justification that includes the information and is approved at the levels prescribed in section 303(f) of the Federal Property and Administration Services Act of 1949 (41 U.S.C. 253(f)) and FAR part 6.

873.105 Acquisition planning.

- (a) Acquisition planning is an indispensable component of the total acquisition process.
- (b) For the acquisition of health-care resources consisting of commercial services or the use of medical equipment or space, where the acquisition is expected to exceed the simplified acquisition threshold (SAT), an acquisition team must be assembled. The team shall be tailored by the contracting officer for each particular acquisition expected to exceed the SAT. The team should consist of a mix of staff, appropriate to the complexity of the acquisition, and may include contracting, fiscal, legal,

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administrative, and technical personnel, and such other expertise as necessary to assure a comprehensive acquisition plan. The team should include the small business advocate representing the contracting activity or a higher level designee and the SBA Procurement Center Representative (PRC), if available. As a minimum, the team must include the contracting officer and a representative of the requesting service.

- (c) Prior to determining whether a requirement is suitable for acquisition using these simplified acquisition procedures, the contracting officer or the acquisition team, as appropriate, must conduct market research to identify interested businesses. It is the responsibility of the contracting officer to ensure the requirement is appropriately publicized and information about the procurement opportunity is adequately disseminated as set forth in 873.108.
- (d) In lieu of the requirements of FAR part 7 addressing documentation of the acquisition plan, the contracting officer may conduct an acquisition strategy meeting with cognizant offices to seek approval for the proposed acquisition approach. If a meeting is conducted, briefing materials shall be presented to address the acquisition plan topics and structure in FAR 7.105. Formal written minutes shall be prepared to summarize decisions, actions, and conclusions and included in the contract file, along with a copy of the briefing materials.

873.106 Presolicitation exchanges with industry.

(a) This section shall be used in lieu of FAR part 10, except as provided in paragraph (b)(3) of this section. In conducting market research, exchange of information by all interested parties involved in an acquisition, from the earliest identification of a requirement through release of the solicitation, is encouraged. Interested parties include potential offerors, end users, Government acquisition and support personnel, and others involved in the conduct or outcome of the acquisition. The nature and extent of presolicitation exchanges between the Government and industry shall be a matter of the contracting officer's discretion (for acquisitions not exceeding the simplified acquisition threshold) or the acquisition team's discretion, as coordinated by the contracting officer.

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- (b) Techniques to promote early exchange of information include—
 - (1) Industry or small business conferences;
 - (2) Public hearings;
 - (3) Market research in accordance with FAR 10.002(b), which shall be followed to the extent that the provisions therein would provide relevant information;
 - (4) One-on-one meetings with potential offerors;
 - (5) Presolicitation notices;
 - (6) Draft Requests for proposals (RFPs);
 - (7) Requests for information (RFIs);
 - (8) Presolicitation or preproposal conferences;
 - (9) Site visits;
 - (10) Electronic notices (e.g., Internet); and
 - (11) Use of the Procurement Marketing and Access Network (PRO-NET).

873.107 Socioeconomic programs.

(a) *Implementation*. This section provides additional authority, over and above that found at FAR 19.502, to waive small business set-asides. For acquisitions above the micro-purchase threshold, if, through market research, the contracting officer determines that there is reasonable expectation that reasonably priced bids, proposals, or quotations will be received from two or more responsible small businesses, a requirement for health-care resources must be reserved for small business participation. Without regard to FAR 13.003(b)(1), 19.502-2, and 19.502-3, the head of the contracting activity (HCA) may approve a waiver from the requirement for any set-aside for small business participation when a waiver is determined to be in the best interest of the Government.

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- (b) Rejecting Small Business Administration (SBA) recommendations.
 - (1) The contracting officer (or, if a waiver has been approved in accordance with paragraph (a) of this section, the HCA) must consider and respond to a recommendation from an SBA representative to set a procurement aside for small business within 5 working days. If the recommendation is rejected by the contracting officer (or, if a waiver has been approved, by the HCA) and if SBA intends to appeal that determination, SBA must, within 2 working days after receipt of the determination, notify the contracting officer involved of SBA's intention to appeal.
 - (2) Upon receipt of the notification of SBA's intention to appeal and pending issuance of a final Department appeal decision to SBA, the contracting officer involved must suspend action on the acquisition unless a determination is made in writing by the contracting officer that proceeding to contract award and performance is in the public interest. The contracting officer must promptly notify SBA of the determination to proceed with the solicitation and/or contract award and must provide a copy of the written determination to SBA.
 - (3) SBA shall be allowed 10 working days after receiving the rejection notice from the contracting officer (or the HCA, if a waiver has been approved) for acquisitions not exceeding \$5 million, or 15 working days after receiving the rejection notice for acquisitions exceeding \$5 million, to file an appeal. SBA must notify the contracting officer within this 10 or 15 day period whether an appeal has, in fact, been taken. If notification is not received by the contracting officer within the applicable period, it shall be deemed that an appeal was not taken.
 - (4) SBA shall submit appeals to the Secretary. Decisions shall be made by the Procurement Executive, whose decisions shall be final.
- (c) Contracting with the Small Business Administration (the 8(a) Program). The procedures of FAR 19.8 shall be followed where a responsible 8(a) contractor has been identified.

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(d) Certificates of Competency and determinations of responsibility. The Director, Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), and the Assistant Administrator, Office of Industrial Assistance, Small Business Administration (SBA), shall serve as ombudsmen to assist VA contracting officers on any issues relating to Certificates of Competency (COC). Copies of all COC referrals to SBA shall be submitted to the Director, OSDBU (00SB).

873.108 Publicizing contract actions.

- (a) Without regard to FAR 5.101, all acquisitions under this part 873, except as provided in paragraph (b) of this section, for dollar amounts in excess of the simplified acquisition threshold (SAT), as set forth in FAR part 13, shall be publicly announced utilizing a medium designed to obtain competition to the maximum extent practicable and to permit all responsible sources, as appropriate under the provisions of this part, to submit a bid, proposal, or quotation (as appropriate).
 - (1) The publication medium may include the Internet, including the Governmentwide point of entry (GPE), and local, regional or national publications or journals, as appropriate, at the discretion of the contracting officer, depending on the complexity of the acquisition.
 - (2) Without regard to FAR 5.203, notice shall be published for a reasonable time prior to issuance of a request for quotations (RFQ) or a solicitation, depending on the complexity or urgency of the acquisition, in order to afford potential offerors a reasonable opportunity to respond. If the notice includes a complete copy of the RFQ or solicitation, a prior notice is not required, and the RFQ or solicitation shall be considered to be announced and issued at the same time.
 - (3) The notice may include contractor qualification parameters, such as time for delivery of service, credentialing or medical certification requirements, small business or other socio-economic preferences, the appropriate small business size standard, and such other qualifications as the contracting officer deems necessary to meet the needs of the Government.

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- (b) The requirement for public announcement does not apply to sole source acquisitions, described in 873.104(a), from institutions affiliated with the Department in accordance with section 7302 of title 38 U.S.C., including medical practice groups and other approved entities associated with affiliated institutions (entities will be approved if determined legally to be associated with affiliated institutions), or from blood banks, organ banks, or research centers. In addition, the requirement for public announcement does not apply to sole source acquisitions of hospital care and medical services (as those terms are defined in section 1701 of title 38 U.S.C.) or any other health-care services, including acquisitions for the mutual use or exchange of use of such services. However, as required by 38 U.S.C. 8153(a)(3)(D), acquisitions from non-affiliates, if conducted on a sole source basis, must still be justified and approved (see 873.104(d)).
- (c) For acquisitions below the SAT, a public announcement is optional.
- (d) Each solicitation issued under these procedures must prominently identify that the requirement is being solicited under the authority of 38 U.S.C. 8153 and part 873.

873.109 General requirements for acquisition of health-care resources.

- (a) *Source selection authority*. Contracting officers shall be the source selection authority for acquisitions of health-care resources, consisting of commercial services or the use of medical equipment or space, utilizing the guidance contained in this part 873.
- (b) Statement of work/Specifications. Statements of work or specifications must define the requirement and should, in most instances, include qualifications or limitations such as time limits for delivery of service, medical certification or credentialing restrictions, and small business or other socio-economic preferences. The contracting officer may include any other such terms as the contracting officer deems appropriate for each specific acquisition.
- (c) *Documentation*. Without regard to FAR 13.106-3(b), 13.501(b), or 15.406-3, the contract file must include:
 - (1) A brief written description of the procedures used in awarding the contract;
 - (2) The market research, including the determination that the acquisition involves health-care resources;

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- (3) The number of offers received; and
- (4) An explanation, tailored to the size and complexity of the acquisition, of the basis for the contract award decision.
- (d) Time for receipt of quotations or offers.
 - (1) Without regard to FAR 5.203, contracting officers shall set a reasonable time for receipt of quotations or proposals in requests for quotations (RFQs) and solicitations.
 - (2) Without regard to FAR 15.208 or 52.212-1(f), quotations or proposals received after the time set forth in an RFQ or request for proposals (RFP) may be considered at the discretion of the contracting officer if determined to be in the best interest of the Government. Contracting officers must document the rationale for accepting quotations or proposals received after the time specified in the RFQ or RFP. This paragraph (d)(2) shall not apply to RFQs or RFPs if alternative evaluation techniques described in 873.111(e)(1)(ii) are used. This paragraph (d)(2) does not apply to invitations for bid (IFBs).
- (e) Cancellation of procurements. Without regard to FAR 14.404-1, any acquisition may be canceled by the contracting officer at any time during the acquisition process if cancellation is determined to be in the best interest of the Government.

873.110 Solicitation provisions.

- (a) As provided in 873.109(d), contracting officers shall insert the provision at 852.273-70, Late offers, in all requests for quotations (RFQs) and requests for proposals (RFPs) exceeding the micro-purchase threshold.
- (b) The contracting officer shall insert a provision in RFQs and solicitations, substantially the same as the provision at 852.273-71, Alternative negotiation techniques, when either of the alternative negotiation techniques described in 873.111(e)(1) will be used.
- (c) The contracting officer shall insert the provision at 852.273-72, Alternative evaluation, in lieu of the provision at 52.212-2, Evaluation-Commercial Items, when the alternative negotiation technique described in 873.111(e)(1)(ii) will be used.

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- (d) When evaluation information, as described in 873.112, is to be used to select a contractor under an RFQ or RFP for health-care resources consisting of commercial services or the use of medical equipment or space, the contracting officer may insert the provision at 852.273-73, Evaluation—health-care resources, in the RFQ or RFP in lieu of FAR provision 52.212-2.
- (e) As provided at 873.113(f), if award may be made without exchange with vendors, the contracting officer shall include the provision at 852.273-74, Award without exchanges, in the RFQ or RFP.
- (f) The contracting officer shall insert the clauses at FAR 52.207-3, Right of First Refusal of Employment, and at 852.207-70, Report of employment under commercial activities, in all RFQs, solicitations, and contracts issued under the authority of 38 U.S.C. 8151-8153 which may result in a conversion, from in-house performance to contract performance, of work currently being performed by Department of Veterans Affairs employees.

873.111 Acquisition strategies for health-care resources.

Without regard to FAR 13.003 or 13.500(a), the following acquisition processes and techniques may be used, singly or in combination with others, as appropriate, to design acquisition strategies suitable for the complexity of the requirement and the amount of resources available to conduct the acquisition. These strategies should be considered during acquisition planning. The contracting officer shall select the process most appropriate to the particular acquisition. There is no preference for sealed bid acquisitions.

(a) Request for quotations.

- (1) Without regard to FAR 6.1 or 6.2, contracting officers must solicit a sufficient number of sources to promote competition to the maximum extent practicable and to ensure that the purchase is advantageous to the Government, based, as appropriate, on either price alone or price and other factors (e.g., past performance and quality). RFQs must notify vendors of the basis upon which the award is to be made
- (2) For acquisitions in excess of the SAT, the procedures set forth in FAR part 13 concerning RFQs may be utilized without regard to the dollar thresholds contained therein.

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- (b) Sealed bidding. FAR part 14 provides procedures for sealed bidding.
- (c) *Negotiated acquisitions*. The procedures of FAR parts 12, 13, and 15 shall be used for negotiated acquisitions, except as modified in this part.
- (d) Multiphase acquisition technique.
 - (1) General. Without regard to FAR 15.202, multiphase acquisitions may be appropriate when the submission of full proposals at the beginning of an acquisition would be burdensome for offerors to prepare and for Government personnel to evaluate. Using multiphase techniques, the Government may seek limited information initially, make one or more down-selects, and request a full proposal from an individual offeror or limited number of offerors. Provided that the notice notifies offerors, the contracting officer may limit the number of proposals during any phase to the number that will permit an efficient competition among proposals offering the greatest likelihood of award. The contracting officer may indicate in the notice an estimate of the greatest number of proposals that will be included in the down-select phase. The contracting officer may down-select to a single offeror.
 - (2) First phase notice. In the first phase, the Government shall publish a notice (see 873.108) that solicits responses and that may provide, as appropriate, a general description of the scope or purpose of the acquisition and the criteria that will be used to make the initial down-select decision. The notice may also inform offerors of the evaluation criteria or process that will be used in subsequent down-select decisions. The notice must contain sufficient information to allow potential offerors to make an informed decision about whether to participate in the acquisition. The notice must advise offerors that failure to participate in the first phase will make them ineligible to participate in subsequent phases. The notice may be in the form of a synopsis in the Governmentwide point of entry (GPE) or a narrative letter or other appropriate method that contains the information required by this paragraph.
 - (3) First phase responses. Offerors shall submit the information requested in the notice described in paragraph (d)(2) of this section. Information sought in the first phase may be limited to a statement of qualifications and other appropriate information (e.g., proposed technical concept, past performance information, limited pricing information).

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- (4) First phase evaluation and down-select. The Government shall evaluate all offerors' submissions in accordance with the notice and make a down-select decision.
- (5) Subsequent phases. Additional information shall be sought in the second phase so that a down-select can be performed or an award made without exchanges, if necessary. The contracting officer may conduct exchanges with remaining offeror(s), request proposal revisions, or request best and final offers, as determined necessary by the contracting officer, in order to make an award decision.
- (6) *Debriefing*. Without regard to FAR 15.505, contracting officers must debrief offerors as required by 873.118 when they have been excluded from the competition.
- (e) Alternative negotiation techniques.
 - (1) Contracting officers may utilize alternative negotiation techniques for the acquisition of health-care resources. Alternative negotiation techniques may be used when award will be based on either price or price and other factors. Alternative negotiation techniques include but are not limited to:
 - (i) Indicating to offerors a price, contract term or condition, commercially available feature, and/or requirement (beyond any requirement or target specified in the solicitation) that offerors will have to improve upon or meet, as appropriate, in order to remain competitive.
 - (ii) Posting offered prices electronically or otherwise (without disclosing the identity of the offerors) and permitting revisions of offers based on this information.
 - (2) Except as otherwise permitted by law, contracting officers shall not conduct acquisitions under this section in a manner that reveals the identities of offerors, releases proprietary information, or otherwise gives any offeror a competitive advantage (see FAR 3.104).

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873.112 Evaluation information.

- (a) Without regard to FAR 15.304 (except for 15.304(c)(1) and (c)(3), which do apply to acquisitions under this authority), the criteria, factors, or other evaluation information that apply to an acquisition, and their relative importance, are within the broad discretion of agency acquisition officials as long as the evaluation information is determined to be in the best interest of the Government.
- (b) Price or cost to the Government must be evaluated in every source selection. Past performance shall be evaluated in source selections for negotiated competitive acquisitions exceeding the SAT unless the contracting officer documents that past performance is not an appropriate evaluation factor for the acquisition.
- (c) The quality of the product or service may be addressed in source selection through consideration of information such as past compliance with solicitation requirements, technical excellence, management capability, personnel qualifications, and prior experience. The information required from quoters, bidders, or offerors shall be included in notices or solicitations, as appropriate.
- (d) The relative importance of any evaluation information included in a solicitation must be set forth therein.

873.113 Exchanges with offerors.

(a) Without regard to FAR 15.201 or 15.306, negotiated acquisitions generally involve exchanges between the Government and competing offerors. Open exchanges support the goal of efficiency in Government by providing the Government with relevant information (in addition to that submitted in the offeror's initial proposal) needed to understand and evaluate the offeror's proposal. The nature and extent of exchanges between the Government and offerors is a matter of contracting officer judgment. Clarifications, communications, and discussions, as provided for in the FAR, are concepts not applicable to acquisitions under this part 873.

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- (b) Exchanges with potential offerors may take place throughout the source selection process. Exchanges may start in the planning stages and continue through contract award. Exchanges should occur most often with offerors determined to be in the best value pool (see 873.114). The purpose of exchanges is to ensure there is mutual understanding between the Government and the offerors on all aspects of the acquisition, including offerors' submittals/proposals. Information disclosed as a result of oral or written exchanges with an offeror may be considered in the evaluation of an offeror's proposal.
- (c) Exchanges may be conducted, in part, to obtain information that explains or resolves ambiguities or other concerns (e.g., perceived errors, perceived omissions, or perceived deficiencies) in an offeror's proposal.
- (d) Exchanges shall only be initiated if authorized by the contracting officer and need not be conducted with all offerors.
- (e) *Improper exchanges*. Except for acquisitions based on alternative negotiation techniques contained in 873.111(e)(1), the contracting officer and other Government personnel involved in the acquisition shall not disclose information regarding one offeror's proposal to other offerors without consent of the offeror in accordance with FAR parts 3 and 24.
- (f) Award may be made on initial proposals without exchanges if the solicitation states that the Government intends to evaluate proposals and make award without exchanges, unless the contracting officer determines that exchanges are considered necessary.

873.114 Best value pool.

(a) Without regard to FAR 15.306(c), the contracting officer may determine the most highly rated proposals having the greatest likelihood of award based on the information or factors and subfactors in the solicitation. These vendors constitute the best value pool. This determination is within the sole discretion of the contracting officer. Competitive range determinations, as provided for in the FAR, are not applicable to acquisitions under this part 873.

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- (b) In planning an acquisition, the contracting officer may determine that the number of proposals that would otherwise be included in the best value pool is expected to exceed the number at which an efficient, timely, and economical competition can be conducted. In reaching such a conclusion, the contracting officer may consider such factors as the results of market research, historical data from previous acquisitions for similar services, and the resources available to conduct the source selection. Provided the solicitation notifies offerors that the best value pool can be limited for purposes of making an efficient, timely, and economical award, the contracting officer may limit the number of proposals in the best value pool to the greatest number that will permit an efficient competition among the proposals offering the greatest likelihood of award. The contracting officer may indicate in the solicitation the estimate of the greatest number of proposals that will be included in the best value pool. The contracting officer may limit the best value pool to a single offeror.
- (c) If the contracting officer determines that an offeror's proposal is no longer in the best value pool, the proposal shall no longer be considered for award. Written notice of this decision must be provided to unsuccessful offerors at the earliest practicable time.

873.115 Proposal revisions.

- (a) Without regard to FAR 15.307, the contracting officer may request proposal revisions as often as needed during the proposal evaluation process at any time prior to award from vendors remaining in the best value pool. Proposal revisions shall be submitted in writing. The contracting officer may establish a common cutoff date for receipt of proposal revisions. Contracting officers may request best and final offers. In any case, contracting officers and acquisition team members must safeguard proposals, and revisions thereto, to avoid unfair dissemination of an offeror's proposal.
- (b) If an offeror initially included in the best value pool is no longer considered to be among those most likely to receive award after submission of proposal revisions and subsequent evaluation thereof, the offeror may be eliminated from the best value pool without being afforded an opportunity to submit further proposal revisions.
- (c) Requesting and/or receiving proposal revisions do not necessarily conclude exchanges. However, requests for proposal revisions should advise offerors that the Government may make award without obtaining further revisions

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873.116 Source selection decision.

- (a) An integrated comparative assessment of proposals should be performed before source selection is made. The contracting officer shall independently determine which proposal(s) represents the best value, consistent with the evaluation information or factors and subfactors in the solicitation, and that the prices are fair and reasonable. The contracting officer may determine that all proposals should be rejected if it is in the best interest of the Government.
- (b) The source selection team, or advisory boards or panels, may conduct comparative analysis(es) of proposals and make award recommendations, if the contracting officer requests such assistance.
- (c) The source selection decision must be documented in accordance with FAR 15.308.

873.117 Award to successful offeror.

- (a) The contracting officer shall award a contract to the successful offeror by furnishing the contract or other notice of the award to that offeror.
- (b) If a request for proposal (RFP) process was used for the solicitation and if award is to be made without exchanges, the contracting officer may award a contract without obtaining the offeror's signature a second time. The offeror's signature on the offer constitutes the offeror's agreement to be bound by the offer. If a request for quotation (RFQ) process was used for the solicitation, and if the contracting officer determines there is a need to establish a binding contract prior to commencement of work, the contracting officer should obtain the offeror's acceptance signature on the contract to ensure formation of a binding contract.
- (c) If the award document includes information that is different than the latest signed offer, both the offeror and the contracting officer must sign the contract award.
- (d) When an award is made to an offeror for less than all of the items that may be awarded and additional items are being withheld for subsequent award, each notice shall state that the Government may make subsequent awards on those additional items within the offer acceptance period.

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873.118 Debriefings.

Offerors excluded from a request for proposals (RFP) may submit a written request for a debriefing to the contracting officer. Without regard to FAR 15.505, preaward debriefings may be conducted by the contracting officer when determined to be in the best interest of the Government. Post-award debriefings shall be conducted in accordance with FAR 15.506.